

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.278/2002

- (1) Goa Trade Commercial Workers' Union, a Trade Union, registered under the Indian Trade Unions Act, 1926, represented herein by its President Shri Christopher Fonseca, having office at Velho Building, 2nd Floor, Panaji, Goa.
- (2) Shri Prakash Naik, President, Western India Shipyard Limited, Workers Committee, C/o. Trade Union Office, 2nd Floor, Velho Building, Panaji, Goa. Petitioners.

Versus

- (1) Union of India, through Secretary, Ministry of Labour, Shram Raksha Bhavan, New Delhi.
- (2) The Regional Labour Commissioner (Central) Shram Raksha Bhavan, Shivrushti Road, Opposite Priyadarshini, Sion, Mumbai - 400 022.
- (3) The Assistant Labour Commissioner (Central) Municipal Building, Vasco-da-Gama, Goa.
- (4) M/s. Western India Shipyard Limited, a Company incorporated under the Companies Act, 1956 (Act 1 of 1956), having its Office at Mormugao, Harbour, Vasco-da-Gama, Goa. Respondents.

Mr. M.S. Sonak, Advocate for the petitioners.

Mr. J. S. Vaz, Addl. Central Govt. Standing Counsel for respondents No.1 to 3.

Mr. M.S. Joshi, Advocate for respondent No.4.

CORAM : P.V. KAKADE &
P.V. HARDAS, JJ.

DATED : OCTOBER 14, 2002

ORAL JUDGMENT : (Per HARDAS, J.)

Rule. By consent of parties, rule made returnable forthwith. This petition, by consent of the parties, is being decided at the stage of admission.

2. This petition has been filed by the petitioners praying for the issuance of a writ of mandamus, directing respondent No.1 to make reference under Section 10 of Industrial Disputes Act, 1947 in the matter of Charter of Demands dated 22.10.2001, submitted by petitioner No.1-Union to respondent No.4. In the alternative, it is prayed for issuance of a writ of mandamus directing respondents Nos.2 and 3 to admit the dispute in conciliation, proceed with conciliation and submit failure report, in the event no settlement is arrived at within a period of 14 days from the date of commencement.

3. The brief facts necessary for the decision of this petition are :

On 22.10.2001, petitioner No.1 had raised

their fresh Charter of Demands and had submitted the same to respondent No.4. Respondent No.4 despite the reminder issued by petitioner No.1, did not commence the discussions and/or negotiations on the Charter of Demands. The petitioners, therefore, served a strike notice dated 10.1.2002 in respect of the proposal to proceed on "one day protest strike" on 29.1.2002. Meanwhile, third respondent, by his letter dated 19.1.2002 called upon the petitioners and respondent No.4 to attend his office on 25.1.2002 for the purpose of joint discussion and if need be, also to initiate conciliation proceedings in the dispute. In response to the letter of the third respondent, representative of petitioner No.1-Union appeared before respondent No.3. However, as is contended by the petitioners, none appeared on behalf of respondent No.4. It is also stated in the petition that the petitioners addressed a communication dated 1.2.2002 to respondent No.3, requesting his intervention to resolve the dispute that had arisen on account of non-settlement of Charter of Demands dated 22.10.2001. Respondent No.3, by his letter dated 6.2.2002, informed the petitioners that the file had been transferred to the Regional Labour Commissioner (Central), Shram Raksha Bhavan, Shivrushti Road, Sion, Mumbai for further proceedings in the matter. The petitioners further state that their letter dated 21.3.2002 addressed to respondent

No.1 did not yield any result and, therefore, petitioner No.1, Union addressed their reminder on 7.6.2002 to respondent No.3 with a copy to respondent No.2. Respondent No.3, in turn, informed petitioner No.1 that the file had been transferred to respondent No.2 and, accordingly, requested the petitioners to take up the matter before respondent No.2.

4. It is stated that petitioner No.1-Union by its letter dated 22.6.2002, requested respondent No.2 to take up the dispute in conciliation and issue necessary notice to the concerned parties. This was followed up by personal visit by the Secretary of petitioner No.1, Union to the office of respondent No.2 at Mumbai. Petitioner No.1 had again addressed a letter dated 4.7.2002 to respondent No.2.

Hence, this petition praying for the aforesaid reliefs.

5. We have heard learned Counsel for the parties. This is a case where respondent no.2 to whom the file has been transferred, has failed to discharge his statutory duties. It is apparent that an industrial dispute exists as Charter of Demands had been presented. Initially, when respondent No.3 had called the parties for discussion, no fruitful

results yielded from the discussion. We, therefore, direct respondent No.2 to forthwith hold conciliation proceedings and if, no settlement is arrived at, to submit a failure report to the first respondent, within the period specified under Section 12 of the Industrial Disputes Act. In the event, respondent No.1 decides to refer the dispute, the same shall be done within a period of two months from the date of receipt of the failure report from respondent No.2. If the dispute is referred for adjudication to the Industrial Tribunal, the Industrial Tribunal shall expeditiously decide the said dispute.

6. The Writ Petition is, accordingly, allowed. Rule made absolute on the above terms, with no order as to costs.

P.V. KAKADE, J.

P.V. HARDAS, J.

ssm.